



The City of New York
BUSINESS INTEGRITY COMMISSION
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**DECISION OF THE BUSINESS INTEGRITY COMMISSION DENYING
THE APPLICATION OF PRESTIGE STONE & PAVERS CORP.
FOR A CLASS 2 REGISTRATION TO OPERATE AS A TRADE WASTE BUSINESS**

I. Introduction

On or about January 13, 2017, Prestige Stone & Pavers Corp. (the “Applicant”) (BIC #492028) applied to the New York City Business Integrity Commission for an exemption from the Commission’s trade waste licensing requirements “to operate a trade waste business solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation (the “Application”). Local Law 42 of 1996 (“Local Law 42”) authorizes the Commission to review and make determinations on such applications. *See* Title 16-A, New York City Administrative Code (“Administrative Code” or “Admin. Code”) § 16-505(a).

On April 22, 2019, the Commission’s staff served the Applicant with a “Notice to the Applicant of the Grounds to Deny the Renewal Application of Prestige Stone & Pavers Corp. for a Class 2 registration to Operate as a Trade Waste Business” (the “Notice”). The Applicant was given until May 8, 2019 to respond. *See* Title 17 of the Rules of the City of New York (“RNCY”) § 2-08(a). The Applicant did not contact the Commission’s staff or submit a response to the Notice. The Commission has completed its review of the Application, having carefully considered the Notice. Based on the record as to the Applicant, the Commission denies the Application because the Applicant lacks good character, honesty and integrity based on the following two independently sufficient grounds:

- 1. The Applicant’s sole-disclosed principal knowingly provided false and misleading information during her sworn testimony before the Commission; and**
- 2. The Applicant knowingly provided false and misleading information on its application.**

II. Statutory Background and Framework

Every commercial business establishment in New York City must contract with a private carting company to remove and dispose of the waste it generates, known as trade waste. Historically, the private carting industry in the City was operated as a cartel controlled by organized crime. As evidenced by numerous criminal prosecutions, the industry was plagued by pervasive racketeering, anticompetitive practices and other corruption. *See, e.g., United States v. Int’l Brotherhood of Teamsters (Adelstein)*, 998 F.2d 120 (2d Cir. 1993); *People v. Ass’n of Trade*

Waste Removers of Greater New York Inc., Indictment No. 5614/95 (Sup. Ct. N.Y. Cty.); *United States v. Mario Gigante*, No. 96 Cr. 466 (S.D.N.Y.); *People v. Ass'n of Trade Waste Removers of Greater New York*, 701 N.Y.S.2d 12 (1st Dep't 1999). The construction and demolition debris removal sector of the City's carting industry specifically has also been the subject of significant successful racketeering prosecutions. See *United States v. Paccione*, 949 F.2d 1183, 1186-88 (2d Cir. 1991), *cert. denied*, 505 U.S. 1220 (1992); *United States v. Cafra*, No. 94 Cr. 380 (S.D.N.Y.); *United States v. Barbieri*, No. 94 Cr. 518 (S.D.N.Y.).

The Commission is charged with, among other things, combating the influence of organized crime and preventing its return to the City's private carting industry, including the construction and demolition debris removal industry. Instrumental to this core mission is the licensing scheme set forth in Local Law 42, which created the Commission and granted it the power and duty to license and regulate the trade waste removal industry in New York City. See Admin. Code § 16-505(a). This regulatory framework continues to be the primary means of ensuring that an industry once overrun by corruption remains free from organized crime and other criminality, and that commercial businesses that use private carters can be ensured of a fair, competitive market.

Pursuant to Local Law 42, a company "solely engaged in the removal of waste materials resulting from building demolition, construction, alteration or excavation," also known as construction and demolition debris, must apply to the Commission for an exemption from the licensing requirement. *Id.* If, upon review of an application, the Commission grants an exemption from the licensing requirement, it issues the applicant a class 2 registration. *Id.* at § 16-505(a)-(b). Before issuing such registration, the Commission must evaluate the "good character, honesty and integrity of the applicant." *Id.* at § 16-508(b); see also *id.* at § 16-504(a). An "applicant" for a license or registration means both the business entity and each principal thereof. *Id.* at § 16-501(a).

The Administrative Code provides an illustrative list of relevant factors for the Commission to consider in making a decision on an application for a license or registration:

1. failure by such applicant to provide truthful information in connection with the application;
2. a pending indictment or criminal action against such applicant for a crime which under this subdivision would provide a basis for the refusal of such license, or a pending civil or administrative action to which such applicant is a party and which directly relates to the fitness to conduct the business or perform the work for which the license is sought, in which cases the commission may defer consideration of an application until a decision has been reached by the court or administrative tribunal before which such action is pending;
3. conviction of such applicant for a crime which, considering the factors set forth in section seven hundred fifty-three of the

correction law, would provide a basis under such law for the refusal of such license;

4. a finding of liability in a civil or administrative action that bears a direct relationship to the fitness of the applicant to conduct the business for which the license is sought;

5. commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity, including but not limited to the offenses listed in subdivision one of section nineteen hundred sixty-one of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961 *et seq.*) or of an offense listed in subdivision one of section 460.10 of the penal law, as such statutes may be amended from time to time, or the equivalent offense under the laws of any other jurisdiction;

6. association with any member or associate of an organized crime group as identified by a federal, state or city law enforcement or investigative agency when the applicant knew or should have known of the organized crime associations of such person;

7. having been a principal in a predecessor trade waste business as such term is defined in subdivision a of section 16-508 of this chapter where the commission would be authorized to deny a license to such predecessor business pursuant to this subdivision;

8. current membership in a trade association where such membership would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter unless the commission has determined, pursuant to such subdivision, that such association does not operate in a manner inconsistent with the purposes of this chapter;

9. the holding of a position in a trade association where membership or the holding of such position would be prohibited to a licensee pursuant to subdivision j of section 16-520 of this chapter;

10. failure to pay any tax, fine, penalty, or fee related to the applicant's business for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction.

Id. at § 16-509(a)(i)-(x). *See also id.* at § 16-504(a).

The Commission also may refuse to issue a license or registration to any applicant who has “knowingly failed to provide information or documentation required by the Commission . . . or who has otherwise failed to demonstrate eligibility for a license.” *Id.* at § 16-509(b). *See also Elite Demolition Contracting Corp. v. The City of New York*, 125 A.D.3d 576 (1st Dep’t 2015); *Breeze Carting Corp. v. The City of New York*, 52 A.D.3d 424 (1st Dep’t 2008); *Attonito v. Maldonado*, 3 A.D.3d 415 (1st Dep’t) (Commission may deny an application for an exemption “where the applicant fails to provide the necessary information, or knowingly provides false information”); leave denied 2 N.Y.3d 705 (N.Y. 2004). *See also* Admin. Code § 16-509(a)(i) (failure to provide truthful information in connection with application as a consideration for denial). In addition, the Commission may refuse to issue a license or registration to an applicant that “has been determined to have committed any of the acts which would be a basis for the suspension or revocation of a license.” *Id.* at § 16-509(c). *See also id.* at § 16-504(a). Finally, the Commission may refuse to issue a license or registration to any applicant where the applicant or its principals have previously had their license or registration revoked. *Id.* at § 16-509(d); *see also id.* at § 16-504(a).

An applicant for a private carting license (including a registration for hauling construction and demolition debris) has no entitlement to and no property interest in a license or registration, and the Commission is vested with broad discretion to grant or deny a license or registration application. *Sanitation & Recycling Indus., Inc.*, 107 F.3d 985, 995 (2d Cir. 1997); *see also Daxor Corp. v. New York Dep’t of Health*, 90 N.Y.2d 89, 98-100 (N.Y. 1997).

III. Statement of Facts

A. Registration Application

On or about January 13, 2017, the Applicant applied to the Commission for an exemption from the licensing requirements and a registration to operate as a trade waste business that removes construction and demolition debris. *See* Application for Exemption From Licensing Requirement for Removal of Construction and Demolition Debris (the “Registration Application”). The Registration Application disclosed, among other things, that (1) Angelica Fortich (“Fortich”) was the Applicant’s sole principal and owner; (2) no other person had been a past principal of the company; and (3) no one assisted Fortich in preparing the application. *See* Registration Application at 12-16. The Applicant disclosed it has 29 employees in addition to Fortich, and that its office and mailing address is “14-17 Bell Blvd., Bayside NY 11360.” *See* Registration Application at 1, 4. Fortich certified under oath that all of the information contained in the Registration Application was “full, complete, and truthful.” *Id.* at 20.

On March 13, 2017, the Commission’s staff requested that the Applicant provide the Commission with the names and other identifying information for its 29 employees. On March 22, 2017, Fortich provided a notarized letter listing the Applicant’s “office” staff. *See* Fortich letter dated March 22, 2017. The letter lists seven employees, including Fortich. Neither the letter nor the Registration Application disclose her husband, Duarte Lopes (“Lopes”), as an employee or principal. *See* Registration Application.

B. Angelica Fortich's Sworn Testimony before the Commission

On August 2, 2017, the Commission's staff interviewed Fortich under oath in connection with the Registration Application. See August 2, 2017 Transcript of Sworn Interview of Fortich ("Fortich Tr."). Fortich testified that Lopes personally made a \$75,000 interest-free start-up loan to the Applicant, which the Applicant repaid in full in 2017. See Fortich Tr. at 26-27, 55-56. Fortich testified that other than this personal loan, Lopes "has no involvement at all" in the Applicant's business. Fortich Tr. at 27, 47, 55-56. Fortich further testified that the Applicant performs stone and paving work under contracts awarded by the City of New York. See Fortich Tr. at 25.

C. Lopes and Professional Pavers Corp.

Lopes is listed on multiple accounts and documents related to the Applicant. Lopes is listed as a co-account holder on three of the Applicant's credit card accounts and as the tenant on the Applicant's 2015 lease agreement for 14-17 Bell Blvd, Bayside, NY 11361. See American Express account ending in 0-01006 December 2014 - April 2016 statements; Chase account ending in 0-35571 June 2014 - October 2017 statements; American Express accounts ending in 0-02004/0-03002 August 2016 - July 2017 statements; March 15, 2015 Commercial Lease at 1. Lopes also lists the Applicant as his employer on an application for a credit card jointly held by Lopes and the Applicant. See American Express application, account ending in 0-01006.

Additionally, Lopes has received substantial financial benefit from the Applicant. The Applicant's financial records show that in 2015, the Applicant paid Lopes a \$5,000 consultant fee. See Chase Bank account ending in 8592, Check No. 1166. Additionally, between 2014 and 2016, the Applicant paid approximately \$58,000 of expenses on behalf of Lopes and a company he owned, Professional Pavers Corp ("Professional"). See American Express account ending in 0-36001 June 2015, July 2016, and December 2016 statements; Chase Bank account ending in 8592 Check Nos. 113, 136, 151, 172, 178, 204, 208, 231, 225, 344, 348, 365, 376, 424, 425, 462, 465, 484, 485, 603, 605, 629, 644, 663, 665, 677, 691, 733784, 1009,1104, 1154, 1185, 3085, 3119, 3159, 3202, and 3323; Sussex Bank account ending in 3666 Check Nos. 1015, 1065, 1094, and 1313; and the Applicant's 2015 General Ledger May 29, 2015 entry: Officer Loan "To pay Professional Pavers credit card" and March 12, 2015 entry: Legal Fees "Lopes v Joseph Foley."

Furthermore, Professional and the Applicant are codefendants in the lawsuit *Sullivan, et. al v. Prestige Stone & Pavers Corp. and Professional Pavers Corp.*, No. 16-CV-3348 (S.D.N.Y. filed May 5, 2016). The lawsuit alleges the Applicant and Professional operate as an alter ego and single or joint employer in order to avoid obligations under collective bargaining agreements. See Complaint at 18. In March 2017, Lopes responded to plaintiff's interrogatories as they pertain to the time period from May 1, 2014 to May 1, 2016. See Responses and Objections to Plaintiff's First Set of Interrogatories to Defendant Professional Pavers Corp. at 3; *id.* Interrogatory 7 states: "Identify amounts involved, reasons for, and dates of transfer of any funds between Professional and Prestige." Lopes responded in part, "there have been no transfers of funds between the two companies." Lopes declared under the penalty of perjury that his answers to the interrogatories "are true and correct to the best of [his] knowledge." *Id.* at 11. In September 2014, Professional

transferred \$30,000 to the Applicant. *See* Chase Bank account ending in 7917 September 2014 statement; Chase Bank account ending in 8529 September 2014 statement.

In addition to *Sullivan*, Lopes and Professional were also defendants in *Ferrara et. al v. Professional Pavers Corp., AAP Artin Architectural Pavers Corp., and Lopes*, No. 11-CV-1433, 2013 WL 1212816 (E.D.N.Y. March 23, 2013). Similar to *Sullivan*, the plaintiffs in *Ferrara* alleged that Professional and AAP Artin Architectural Pavers Corp. operated as an alter ego and single or joint employer in order to avoid obligations under collective bargaining agreements. Professional and Lopes settled with the plaintiffs for \$15,000. *Id.* at 10. The court granted plaintiff's motion for default judgment against AAP Artin Architectural Pavers Corp. *Id.*

Lopes is barred from bidding on or being awarded contracts with New York City until April 2022. *See* Office of the Comptroller Determination and Order at 2, dated April 20, 2017 (OATH Index No. 1654/16). In April 2017, the Office of the Comptroller of the City of New York found that co-respondents Professional, Lopes and Joseph Foley "willfully violated prevailing wage law" and "falsified payroll records in an effort to conceal its violations of prevailing wage laws." *Id.* As a result, the respondents, including Lopes, were ordered to pay a civil penalty of \$96,866.35 and were barred from bidding or being awarded public contracts for five years.

IV. Basis for Denial

1. The Applicant's sole-disclosed principal knowingly provided false and misleading information during sworn testimony before the Commission.

All Applicants must provide truthful and non-misleading information to the Commission. A knowing failure to do so is a basis to deny an application. *See* Admin. Code § 16-509(b); *Attonito*, 3 A.D.3d at 415; *Breeze Carting Corp.*, 52 A.D.3d at 424. Fortich provided false and misleading testimony to the Commission regarding Lopes's involvement in the Applicant's business. As set forth above, Fortich testified that Lopes "has no involvement at all" in the Applicant beyond a personal start-up loan that was repaid. Fortich Tr. at 27, 47, 55-56. Yet, the evidence demonstrates that Lopes' involvement with the Applicant's operations goes far beyond the start-up loan. Lopes is listed on multiple accounts and documents related to the Applicant: he is a co-account holder on three of the Applicant's credit card accounts and the tenant on the Applicant's 2015 lease agreement for 14-17 Bell Blvd, Bayside, NY 11361. *See* American Express account ending in 0-01006 December 2014 - April 2016 statements; Chase account ending in 0-35571 June 2014 - October 2017 statements; American Express accounts ending in 0-02004/0-03002 August 2016 - July 2017 statements; March 15, 2015 Commercial Lease at 1. Lopes also listed the Applicant as his employer on an application for a credit card jointly held by Lopes and the Applicant. *See* American Express application, account ending in 0-01006.

Additionally, Lopes has received substantial financial benefits from the Applicant. In 2015, the Applicant paid Lopes a \$5,000 "consultant fee." *See* Chase Bank account ending in 8592 Check No. 1166. Between 2014 and 2016, the Applicant paid approximately \$58,000 in expenses on behalf of Lopes and a company he owned - Professional. *See* American Express account ending in 0-36001 June 2015, July 2016, and December 2016 statements; Chase Bank account ending in 8592 Check Nos. 113, 136, 151, 172, 178, 204, 208, 231, 225, 344, 348, 365, 376, 424, 425, 462,

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It is clear why Fortich attempted to mislead the Commission. The Applicant performs work on contracts awarded by the City of New York, and Lopes is barred from bidding on or being awarded such contracts. Additionally, Lopes has been the subject of two lawsuits alleging he failed to provide benefits required under collective bargaining agreements. In *Ferrara*, he settled the claims for \$15,000. *Ferrara*, 2013 WL 1212816 at 10. Although *Sullivan* is still on-going, a comparison of Lopes' responses to interrogatories in that matter with the Applicant and Professional's bank records shows that Lopes provided false information under oath. *Compare Sullivan*, Responses and Objections to Plaintiff's First Set of Interrogatories to Defendant Professional Pavers Corp. at 7 (stating no transfer of funds between Professional and Applicant between May 1, 2014 to May 1, 2016) with Chase Bank account ending in 7917 September 2014 statement and Chase Bank account ending in 8529 September 2014 statement (reflecting transfers totaling \$30,000 from Professional to the Applicant).

Because Fortich is the sole-disclosed principal of the Applicant, her false and misleading statements under oath establish that the Applicant lacks good character, honesty, and integrity. The Applicant did not dispute this point. Accordingly, the Commission denies the Application on this independently sufficient basis.

2. The Applicant knowingly provided false and misleading information on its application.

In addition to providing false testimony to the Commission, the Applicant also provided false information on the Registration Application. Question 12 requires disclosure of all present principals of the Applicant. Question 13 requires disclosure of all past principals of the Applicant. "Principal" is defined as "every officer and director and every stockholder holding ten percent or more of the outstanding shares of a corporation . . . and all persons participating directly or indirectly in the control of such business entity." Admin. Code § 16-501(d). The Registration Application, which Fortich certified under oath, disclosed Fortich as the only past and present principal of the Applicant business. *See* Registration Application at 13-16. However, the evidence in this matter establishes that those answers were false and misleading.

The Registration Application failed to disclose Lopes as a past or present principal – or even as a mere employee. Yet, it is clear that Lopes is a principal, participating directly in the control of the Applicant's business. Lopes is an authorized user of the Applicant's credit cards and, thus, able to make financial decisions on behalf of the company. *See* American Express account ending in 0-01006 December 2014 - April 2016 statements; Chase account ending in 0-35571 June 2014 - October 2017 statements; American Express accounts ending in 0-02004/0-03002 August 2016 - July 2017 statements. Lopes also signed a commercial lease agreement on the Applicant's behalf. *See* March 15, 2015 Commercial Lease at 1. Further, Lopes lists the Applicant as his employer in an application for a credit card jointly held by Lopes and the Applicant. *See* American Express application, account ending in 0-01006.

Thus, the Applicant provided false and misleading information to the Commission on the Registration Application. The failure to provide truthful information to the Commission further establishes that the Applicant lacks good character, honesty and integrity. The Applicant does not dispute the foregoing. Accordingly, the Commission denies the Application on this independently sufficient basis.

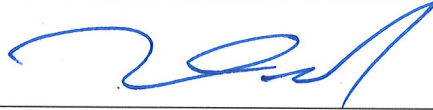
V. Conclusion

The Commission is vested with broad discretion to refuse to issue a license or registration to any applicant it determines lacks good character, honesty and integrity. The record herein demonstrates that the Applicant and its principals – both disclosed and undisclosed – lack good character, honesty and integrity. Accordingly, based on each of the two independently sufficient grounds detailed above, the Commission denies the Renewal Application.

This denial is effective immediately. Prestige Stone & Pavers Corp. may not operate as a trade waste business in the City of New York.

Dated: June 12, 2019

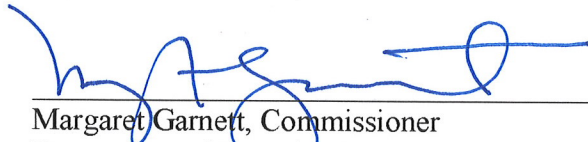
THE NEW YORK CITY
BUSINESS INTEGRITY COMMISSION



Noah D. Genel
Commissioner and Chair



Steven Costas, Acting Commissioner,
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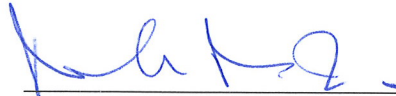
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